IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MS JUSTICE G.ROHINI**

**WRIT PETITION NO : 3392 of 2005**

Between:

Munikoti Surya Prabha, W/o Munikoti Nageswar Rao,

Hindu, aged 35 years, resident of D.No.54-17-120, Bhanu Nagar,

H.B. Colony, Visakhapatnam.

**.....** PETITIONER

AND

1. Visakhapatnam Municipal Corporation,

Represented by it's Commissioner, Tenneti Viswanadham Bhavan,

Asselametta Junction, Visakhapatnam.

2. K. Ananda Babu, City Planner, Visakhapatnam Municipal Corporation,
Tenneti Viswanadham Bhavan, Asselametta Junction, Visakhapatnam.

3. V. Ramudu, Assistant City Planner,

Visakhapatnam Municipal Corporation, Tenneti Viswanadham Bhavan,

Asselametta Junction, Visakhapatnam.

4. Pradeep, Town Planning Assistant,

Visakhapatnam Municipal Corporation, Tenneti Viswanadham Bhavan,

Asselametta Junction, Visakhapatnam.

5. Ramana Murthy, 25th Ward, Building Inspector,

Town Planning Section, Visakhapatnam Municipal Corporation, Tenneti Viswanadham Bhavan, Asselametta Junction, Visakhapatnam.

6. The Visakhapatnam Urban Development Authority,

Represented by it's Vice Chairman, Udyog Bhavan, Siripuram Junction,

Visakhapatnam.

**.....**RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more especially one in the nature of Writ of mandamus, declaring the action of the Respondents in taking over the petitioner's property and demolishing the structures thereon, situated in S.No. 18/1 of Venkojipalem of Visakhapatnam abutting the Road leading from Patha Venkojipalem to Housing Board Colony, on 19-1-2005 and 16-2-2005, as unconstitutional, illegal, arbitrary and in violation of Article 14, 21 and 300A , of the Constitution of India with a consequential direction to the 1`st Respondent to restore possession of the property by allowing only that part of petitioner's site, which may fall for taking over as per the master plan, besides directing all the Respondents either collectively or individually to pay compensation for the loss of property, or in the alternative to direct the 1st Respondent to give alternative land of equal value in all respects, of equal extent apart from paying damages for mental agony and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.S.RAJAN

Counsel for the Respondents: MR.S.NAGESWARA REDDY

**This Court at the admission stage made the following :**

O R D E R:

Heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondents.

The petitioner seeks a Writ of Mandamus to declare the action of the respondents in taking over her property situated in S.No.18/1 of Venkojipalem of Visakhapatnam abutting the Road leading from Patha Venkojipalem to Housing Board Colony on 19-01-2005 and 16-02-2005 and demolishing the structures thereon without following due process of law for the purpose of proposed road widening work as arbitrary and illegal.

It is represented by the learned counsel appearing for both parties that the issue involved in this writ petition is squarely covered by a decision of this Court in W.P. No. 21198 of 1997 and batch, dated 03-02-1998, wherein the Division Bench while considering an identical question, issued guidelines as under:

> *"1. Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.*
>
> 2. *If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall*

*issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment of unauthorized occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.*

3. *In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.*

4. *If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.*

5. *In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.*

6. *If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status-quo obtaining as on today regarding the structures."*

The learned standing counsel appearing for the respondents does not dispute the above legal position.

However, the learned counsel for the petitioner submits that a part of the petitioner's property was already demolished by the respondents without following due process of law and therefore the respondents may be directed to pay the compensation.

I am not inclined to grant such relief in this writ petition, however I deem it appropriate to grant liberty to the petitioner to work out appropriate remedy as available under law.

The writ petition is accordingly disposed of directing the respondents not to demolish the structures in question without following the guidelines issued by the Division Bench in common order dated 03-02-1998 in W.P. No. 21198 of 1997 and batch. However, liberty is reserved to the petitioner to work out the appropriate remedy for the compensation, if any, she is entitled to. No costs.

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(**G. ROHINI, J**)

Date: 23-02-2005

ghn

To

1. Visakhapatnam Municipal Corporation,

Represented by it’s Commissioner, Tenneti Viswanadham Bhavan,

Asselametta Junction, Visakhapatnam.

2. The Visakhapatnam Urban Development Authority,

Represented by it’s Vice Chairman, Udyog Bhavan, Siripuram Junction,

Visakhapatnam.

3. Two CD copies.

**THE HON'BLE MS. JUSTICE G.ROHINI**

WRIT PETITION NO.3392 OF 2005

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OPERATIVE PORTION (BY WIRE):

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The writ petition is accordingly disposed of directing the respondents not to demolish the structures in question without following the guidelines issued by the Division Bench in common order dated 03-02-1998 in W.P. No. 21198 of 1997 and batch. However, liberty is reserved to the petitioner to work out the appropriate remedy for the compensation, if any, she is entitled to. No costs.

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(**G. ROHINI, J**)

Date: 23-02-2005

Note:

1. Issue wire at party's costs.
2. Please send the bundle to the Court Masters Section after dispatch of the wire order.

B/o

ghn